

GIBSON, DUNN & CRUTCHER LLP
SCOTT A. EDELMAN, SBN 116927
sedelman@gibsondunn.com
CATHERINE A. CONWAY, SBN 98366
cconway@gibsondunn.com
JESSE A. CRIPPS, SBN 222285
jcripps@gibsondunn.com
333 South Grand Avenue
Los Angeles, CA 90071-3197
Telephone: 213.229.7000
Facsimile: 213.229.7520

GIBSON, DUNN & CRUTCHER LLP
MICHAEL LI-MING WONG, SBN 194130
mwong@gibsondunn.com
RACHEL S. BRASS, SBN 219301
rbrass@gibsondunn.com
555 Mission Street, Suite 3000
San Francisco, CA 94105-0921
Telephone: 415.393.8200
Facsimile: 415.393.8306

Attorneys for Defendant
WAL-MART STORES, INC.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHARLES RIDGEWAY, JAIME FAMOSO,
JOSHUA HAROLD, RICHARD BYERS,
DAN THATCHER, NINO PAGTAMA,
WILLIE FRANKLIN, TIM OPITZ, FARRIS
DAY, KARL MERHOFF, and MICHAEL
KROHN,

Plaintiffs,

V.

WAL-MART STORES, INC., a Delaware corporation d/b/a WAL-MART TRANSPORTATION LLC, and Does One through and including Doe Fifty,

Defendants.

[Previously captioned as *Bryan et al. v. Wal-Mart Stores, Inc.*]

**SCOPELITIS, GARVIN, LIGHT, HANSON &
FEARY, PC**
JAMES H. HANSON (admitted *pro hac vice*)
jhanson@scopelitis.com
10 West Market Street, Suite 1500
Indianapolis, IN 46204
Telephone: 317.492.9205
Facsimile: 317.687.2414

**SCOPELITIS, GARVIN, LIGHT, HANSON &
FEARY, PC**
ADAM C. SMEDSTAD, SBN 303591
asmedstad@scopelitis.com
30 West Monroe Street, Suite 600
Chicago, IL 60603
Telephone: 312.255.7200
Facsimile: 312.422.1224

CASE NO. 3:08-cv-05221-SI

**DECLARATION OF JENNA M. YOTT IN
SUPPORT OF MOTION TO EXCLUDE THE
REPORTS AND OPINIONS OF DR. G.
MICHAEL PHILLIPS**

Date: September 9, 2016
Time: 9:00 a.m.
Place: Courtroom 1, 17th Floor
Before: Hon. Susan Illston

1 I, Jenna M. Yott, declare as follows:

2 1. I am an attorney admitted to practice law before this Court. I am an associate of the
3 law firm of Gibson, Dunn & Crutcher LLP, and I am one of the attorneys responsible for the
4 representation of Defendant Wal-Mart Stores, Inc. in the above-captioned action. I submit this
5 declaration in support of Wal-Mart's Motion to Exclude the Reports and Opinions of Dr. G. Michael
6 Phillips. The following facts are within my personal knowledge and, if called and sworn as a
7 witness, I would testify competently to these facts.

8 2. Attached as **Exhibit 1** is a true and correct copy of Plaintiffs' Expert Designation,
9 served on May 13, 2016.

10 3. Attached as **Exhibit 2** is a true and correct copy of the Report of Dr. G. Michael
11 Phillips ("Phillips I"), served by Plaintiffs on May 13, 2016.

12 4. Attached as **Exhibit 3** is a true and correct copy of a second Report of Dr. G. Michael
13 Phillips ("Phillips II"), served by Plaintiffs on July 12, 2016. The exhibits to Dr. Phillips' second
14 report were filed previously on July 27, 2016 as ECF 351-3 through 351-21.

15 5. Attached as **Exhibit 4** is a true and correct copy of the Report of Dr. Jonathan Walker
16 ("Walker I"), including its supporting exhibits, served by Wal-Mart on May 13, 2016.

17 6. Attached as **Exhibit 5** is a true and correct copy of the second Report of Dr. Jonathan
18 Walker ("Walker II"), including its supporting exhibits, served by Wal-Mart on July 29, 2016.

19 7. In April 2014, plaintiffs' administered a questionnaire by mail to then-putative class
20 members. Plaintiffs' cover letter concerning this questionnaire stated "As you may know, this law
21 firm is currently pursuing the above-referenced case in an effort to represent all Wal-Mart drivers
22 who have driven for Wal-Mart at any time in California since 2004. The case is being pursued to
23 obtain compensation that is allegedly owed to drivers for various job duties that we contend have not
24 been compensated under California law." A true and correct copy of the letter and questionnaire
25 plaintiffs mailed to putative class members is attached hereto as **Exhibit 6**.

26 8. On January 19, 2016, the Court entered an order authorizing a process for class
27 member depositions. *See Order Approving Stipulation Regarding Class Member Depositions* [ECF
28 253]. That process called for plaintiffs' counsel to select 40 class members, who would then appear

1 for deposition and be sworn, respond to a written questionnaire designed by plaintiffs, meet with
2 plaintiffs' counsel, and then answer questions in deposition posed by counsel for Wal-Mart and
3 plaintiffs. *Id.* ¶¶ 3-7.

4 9. Attached as **Exhibit 7** is a true and correct blank copy of the questionnaire prepared
5 by plaintiffs and administered to each of the 40 class members who was deposed.

6 10. Attached as **Exhibit 8** is a true and correct copy of Defendant Wal-Mart's Objections
7 To Plaintiffs' Written Deposition Questions To Private Fleet Drivers, served on February 16, 2016.

8 11. I received notices that plaintiffs' counsel had issued subpoenas to 104 class members.
9 Of these 104 class members, forty class members appeared for deposition between February 16, 2016
10 and May 12, 2016. I attended 15 of these 40 class member depositions. In each instance, the class
11 member appeared, was sworn in, provided with the questionnaire, and given time to respond to the
12 questionnaire after counsel for plaintiffs and I left the room. Upon completing the questionnaire, the
13 class member met with plaintiffs' counsel privately for a period of time. After that time, the oral
14 deposition began. I understand from other counsel for Wal-Mart who attended the other 25
15 depositions that the deponent drivers met privately with counsel for plaintiffs after the questionnaire
16 and before oral deposition on each occasion.

17 12. Attached as **Exhibit 9** is a true and correct copy of excerpts from the transcript of the
18 March 28, 2016 deposition of Doug Allen, taken in Fresno, California, as recorded by certified court
19 reporter Tanya L. Agostini, CSR No. 8124.

20 13. Attached as **Exhibit 10** is a true and correct copy of excerpts from the transcript of the
21 March 18, 2016 deposition of Mark David Alumbaugh, taken in Bakersfield, California, as recorded
22 by certified court reporter Cindee L. LeFevre, CSR No. 7974. The excerpt includes a questionnaire
23 completed by Mr. Alumbaugh and marked as Exhibit A.

24 14. Attached as **Exhibit 11** is a true and correct copy of excerpts from the transcript of the
25 April 21, 2016 deposition of Michael Andrews, taken in Bakersfield, California, as recorded by
26 certified court reporter Cindee L. LeFevre, CSR No. 7974. The excerpt includes a questionnaire
27 completed by Mr. Andrews and marked as Exhibit A.

1 15. Attached as **Exhibit 12** is a true and correct copy of excerpts from the transcript of the
2 February 23, 2016 deposition of Donald Auker, taken in Red Bluff, California, as recorded by
3 certified court reporter Sharon L. Dunbar, CSR No. 4051. The excerpt includes a questionnaire
4 completed by Mr. Auker and marked as Exhibit A.

5 16. Attached as **Exhibit 13** is a true and correct copy of excerpts from the transcript of the
6 April 11, 2016 deposition of Michael Barker, as recorded by certified court reporter Jamie Yang.

7 17. Attached as **Exhibit 14** is a true and correct copy of excerpts from the transcript of the
8 May 10, 2016 deposition of James Batham, taken in Red Bluff, California, as recorded by certified
9 court reporter Craig W. Wood, RPR, CSR No. 9789. The excerpt includes a questionnaire completed
10 by Mr. Batham and marked as Exhibit A.

11 18. Attached as **Exhibit 15** is a true and correct copy of excerpts from the transcript of the
12 March 15, 2016 deposition of Robert Benavidez, taken in Bakersfield, California, as recorded by
13 certified court reporter Wendy Hahesy, RMR, CSR No. 4873. The excerpt includes a questionnaire
14 completed by Mr. Benavidez and marked as Exhibit A.

15 19. Attached as **Exhibit 16** is a true and correct copy of excerpts from the transcript of the
16 February 22, 2016 deposition of Dana Brittan, taken in Redding, California, as recorded by certified
17 court reporter Tanya L. Agostini, CSR No. 8124.

18 20. Attached as **Exhibit 17** is a true and correct copy of excerpts from the transcript of the
19 March 15, 2016 deposition of Todd Brown, taken in Bakersfield, California, as recorded by certified
20 court reporter Wendy Hahesy, RMR, CSR No. 4873. The excerpt includes a questionnaire completed
21 by Mr. Brown and marked as Exhibit A. Attached as **Exhibit 18** is a true and correct copy of the
22 2014 questionnaire taken by Todd Brown and attached as Exhibit 3 to his deposition.

23 21. Attached as **Exhibit 19** is a true and correct copy of excerpts from the transcript of the
24 February 29, 2016 deposition of Raymond Byer, taken in Red Bluff, California, as recorded by
25 certified court reporter Sharon L. Dunbar, CSR No. 4051. The excerpt includes a questionnaire
26 completed by Mr. Byer and marked as Exhibit A.

1 22. Attached as **Exhibit 20** is a true and correct copy of excerpts from the transcript of the
2 April 12, 2016 deposition of Bobby Carr, taken in Chico, California, as recorded by certified court
3 reporter Leian R. Ellis, CSR No. 7431.

4 23. Attached as **Exhibit 21** is a true and correct copy of excerpts from the transcript of the
5 February 16, 2016 deposition of Glen Craft, taken in Bakersfield, California, as recorded by certified
6 court reporter Melinda Martin, CSR No. 9240.

7 24. Attached as **Exhibit 22** is a true and correct copy of excerpts from the transcript of the
8 February 23, 2016 deposition of David Evans, Jr., taken in Red Bluff, California, as recorded by
9 certified court reporter Sharon L. Dunbar, CSR No. 4051.

10 25. Attached as **Exhibit 23** is a true and correct copy of excerpts from the transcript of the
11 February 17, 2016 deposition of Charles Fox, taken in Fresno, California, as recorded by certified
12 court reporter Devra L. Joy, CSR No. 6459. The excerpt includes a questionnaire completed by Mr.
13 Fox and marked as Exhibit A.

14 26. Attached as **Exhibit 24** is a true and correct copy of excerpts from the transcript of the
15 March 21, 2016 deposition of Robert Anthony Garcia, taken in Costa Mesa, California, as recorded
16 by certified court reporter Suzanne C. Scheller, CSR No. 12652.

17 27. Attached as **Exhibit 25** is a true and correct copy of excerpts from the transcript of the
18 February 19, 2016 deposition of Ivan J. Harris, taken in Riverside, California, as recorded by certified
19 court reporter Margaret M. Bourgeois, CSR No. 11569.

20 28. Attached as **Exhibit 26** is a true and correct copy of excerpts from the transcript of the
21 February 18, 2016 deposition of Matthew Allen Hartley, taken in San Diego, California, as recorded
22 by certified court reporter Renee Kelch, CSR No. 5063. The excerpt includes a questionnaire
23 completed by Mr. Hartley and marked as Exhibit A.

24 29. Attached as **Exhibit 27** is a true and correct copy of excerpts from the transcript of the
25 March 2, 2016 deposition of Bernard F. Johnston, III, taken in Victorville, California, as recorded by
26 certified court reporter Amy P. Smith, CSR No. 12154.

1 30. Attached as **Exhibit 28** is a true and correct copy of excerpts from the transcript of the
2 February 18, 2016 deposition of Frank Eugene LaCas, taken in San Diego, California, as recorded by
3 certified court reporter Renee Kelch, CSR No. 5063.

4 31. Attached as **Exhibit 29** is a true and correct copy of excerpts from the transcript of the
5 March 10, 2016 deposition of Robert Laurye, taken in Red Bluff, California, as recorded by certified
6 court reporter Craig W. Wood, RPR, CSR No. 9789.

7 32. Attached as **Exhibit 30** is a true and correct copy of excerpts from the transcript of the
8 March 3, 2016 deposition of David Lopez, taken in Salt Lake City, Utah, as recorded by certified
9 court reporter Michelle Mallonee, RPR, CSR No. 267114-7801. The excerpt includes a questionnaire
10 completed by Mr. Lopez and marked as Exhibit A.

11 33. Attached as **Exhibit 31** is a true and correct copy of excerpts from the transcript of the
12 April 28, 2016 deposition of Stanley McCulley, taken in Red Bluff, California, as recorded by
13 certified court reporter Craig W. Wood, CSR No. 9789.

14 34. Attached as **Exhibit 32** is a true and correct copy of excerpts from the transcript of the
15 May 12, 2016 deposition of Dale McFall, taken in Red Bluff, California, as recorded by certified
16 court reporter Craig W. Wood, RPR, CSR No. 9789. The excerpt includes a questionnaire completed
17 by Mr. McFall and marked as Exhibit A.

18 35. Attached as **Exhibit 33** is a true and correct copy of excerpts from the transcript of the
19 March 21, 2016 deposition of Bruce McKee, taken in Red Bluff, California, as recorded by certified
20 court reporter Craig W. Wood, RPR, CSR No. 9789. The excerpt includes a questionnaire completed
21 by Mr. McKee and marked as Exhibit A.

22 36. Attached as **Exhibit 34** is a true and correct copy of excerpts from the transcript of the
23 March 18, 2016 deposition of Charles McLaughlin, taken in Fresno, California, as recorded by
24 certified court reporter Devra L. Joy, CSR No. 6459. The excerpt includes a questionnaire completed
25 by Mr. McLaughlin and marked as Exhibit A. Attached as **Exhibit 35** is a true and correct copy of
26 the 2014 questionnaire taken by Charles McLaughlin and attached as Exhibit 3 to his deposition.

1 37. Attached as **Exhibit 36** is a true and correct copy of excerpts from the transcript of the
2 February 26, 2016 deposition of Eric Gean Alfred Nettles, taken in Riverside, California, as recorded
3 by certified court reporter Suzanne C. Scheller, CSR No. 12652.

4 38. Attached as **Exhibit 37** is a true and correct copy of excerpts from the transcript of the
5 March 1, 2016 deposition of Kenneth Nevarez, taken in Redding, California, as recorded by certified
6 court reporter Craig W. Wood, RPR, CSR No. 9789.

7 39. Attached as **Exhibit 38** is a true and correct copy of excerpts from the transcript of the
8 May 11, 2016 deposition of Wesley Powers, taken in Red Bluff, California, as recorded by certified
9 court reporter Christena Gray, CSR No. 9360.

10 40. Attached as **Exhibit 39** is a true and correct copy of excerpts from the transcript of the
11 March 23, 2016 deposition of Kevin Putnam, taken in Riverside, California, as recorded by certified
12 court reporter Suzanne C. Scheller, CSR No. 12652. The excerpt includes a questionnaire completed
13 by Mr. Putnam and marked as Exhibit A. Attached as **Exhibit 40** is a true and correct copy of the
14 2014 questionnaire taken by Kevin Putnam and attached as Exhibit 1 to his deposition.

15 41. Attached as **Exhibit 41** is a true and correct copy of excerpts from the transcript of the
16 February 26, 2016 deposition of Michael Rand, taken in Los Angeles, California, as recorded by
17 certified court reporter Karen Aligo, CSR No. 13418. The excerpt includes a questionnaire
18 completed by Mr. Rand and marked as Exhibit A.

19 42. Attached as **Exhibit 42** is a true and correct copy of excerpts from the transcript of the
20 February 23, 2016 deposition of John Rivero, taken in Fresno, California, as recorded by certified
21 court reporter Devra L. Joy, CSR No. 6459. The excerpt includes a questionnaire completed by Mr.
22 Rivero and marked as Exhibit A.

23 43. Attached as **Exhibit 43** is a true and correct copy of excerpts from the transcript of the
24 February 22, 2016 deposition of Greg Ryan, taken in Redding, California, as recorded by certified
25 court reporter Tanya L. Agostini, CSR No. 8124. The excerpt includes a questionnaire completed by
26 Mr. Ryan and marked as Exhibit A.

27 44. Attached as **Exhibit 44** is a true and correct copy of excerpts from the transcript of the
28 February 18, 2016 deposition of Daniel A. Steele, taken in Fresno, California, as recorded by

1 certified court reporter Devra L. Joy, CSR No. 6459. The excerpt includes a questionnaire completed
2 by Mr. Steele and marked as Exhibit A.

3 45. Attached as **Exhibit 45** is a true and correct copy of excerpts from the transcript of the
4 March 22, 2016 deposition of Frank Temple, taken in Riverside, California, as recorded by certified
5 court reporter Suzanne C. Scheller, CSR No. 12652. The excerpt includes a questionnaire completed
6 by Mr. Temple and marked as Exhibit A.

7 46. Attached as **Exhibit 46** is a true and correct copy of excerpts from the transcript of the
8 February 17, 2016 deposition of Mario Trevino, taken in Fresno, California, as recorded by certified
9 court reporter Devra L. Joy, CSR No. 6459. The excerpt includes a questionnaire completed by Mr.
10 Trevino and marked as Exhibit A.

11 47. Attached as **Exhibit 47** is a true and correct copy of excerpts from the transcript of the
12 May 4, 2016 deposition of Angel Vasquez, taken in Fresno, California, as recorded by certified court
13 reporter Devra L. Joy, CSR No. 6459. The excerpt includes a questionnaire completed by Mr.
14 Vasquez and marked as Exhibit A.

15 48. Attached hereto as **Exhibit 48** is a true and correct copy of a chapter written by Shari
16 Seidman Diamond entitled "Reference Guide on Survey Research" from the Federal Judicial Center's
17 book **REFERENCE MANUAL ON SCIENTIFIC EVIDENCE**, 3rd edition, published in 2011.

18 I declare under penalty of perjury under the laws of the United States that the foregoing is true
19 and correct, and that I executed this Declaration on the 29th day of July, 2016 in San Francisco,
20 California.

21 /s/ Jenna Yott
22 Jenna Yott

23 **ATTESTATION OF FILER**

24 I, Adam C. Smedstad, attest that concurrence in
25 the filing of this document has been obtained
26 from the other Signatory.

27 Signed this 29th day of July, 2016.
28 /s/ Adam C. Smedstad
Adam C. Smedstad